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U.S. Citizenship
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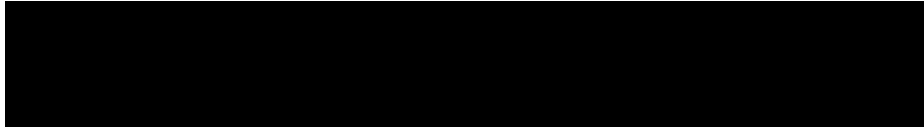
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File: [REDACTED] Office: VERMONT SERVICE CENTER

Date: OCT 07 2004

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to classify him as a Pastor/Chaplain. The director denied the petition on May 9, 2003.

The petitioner files a timely appeal.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
- (II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
- (III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

In denying the petition the director found that the petitioner failed to explain the standards required for the beneficiary to be recognized by the petitioning church or that the beneficiary had satisfied such a standard. The director further determined that the petitioner failed to establish that the petitioner's denomination recognizes the beneficiary's credentials as a Pastor/Chaplain. Based upon these determinations, the director concluded the petitioner failed to establish the beneficiary had been and will be employed in a religious occupation. We find the issues of the petitioner's past experience and the prospective job offer are somewhat interrelated, and thus, we shall consider them together.

The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

The petition was filed on January 31, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious duties throughout the two years immediately prior to that date, and that the beneficiary seeks to enter the United States in order to perform those same duties.

In the petitioner's letter submitted concurrently with the filing of the petition, the petitioner states that it is:

[P]etitioning for [the beneficiary] who is a Minister. As a religious worker, [the beneficiary] will preach the Holy Gospel to the young and old people. [The beneficiary] will dedicate 35 or 40 hours per week to perform his duties and responsibilities.

As evidence of his previous employment, the petitioner submits a letter from Luis H. Abril, Pastor of the Church of God, Huachi Chico of Ambato, Province of Tungurahua, Ecuador which states:

[The beneficiary] is a member of this church since 1988 and worked as a Deacon and preacher in our church from January 5, 1998 until February 15, 2000, also he worked as a matrimonial counselor and preacher of the word of God in the rehabilitation [sic] centers of Cotopaxi and Tungurahua.

In a letter dated, December 30, 2002, the petitioner responds to the director's request for evidence. The petitioner states:

The beneficiary . . . is a well qualified person to do the job, because he worked in the same position in the Church of God at Ambato-Ecuador (a branch of the Church The International

Missions Love and Holiness, Inc. in Ecuador), attended the seminar at Ambato-Ecuador, and he was graduated as a Pastor/Chaplain from our Biblical Institute on March 12, 2000.

In support of this statement the petitioner submits a copy of the beneficiary's graduation certificate certifying that on March 12, 2000, the beneficiary "graduated in the Biblical Institute and is endowed with all the rights, honors and privileges of position and accepted as a pastor/chaplain of this mission."

Pursuant to the plain language of statute and regulations, if the beneficiary seeks to enter the United States to work as a Pastor/Chaplain, then he must have at least two years of experience as a Pastor/Chaplain immediately prior to the petition's filing date. Given that the proffered position is that of a Pastor/Chaplain and the beneficiary did not become a Pastor/Chaplain until March 12, 2000, the petitioner cannot show that the beneficiary has been continuously performing such work for the two years preceding the filing of the petition. Further, there is no evidence that the beneficiary worked as a Pastor/Chaplain after March 12, 2000. At best, this petition appears to have been filed prematurely, and this decision is without prejudice to any future filing.

While the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (CIS), the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

As we find the petitioner did not have the requisite experience as a Chaplain/Pastor at the time of filing, the director's findings as to the standards required and recognition as a Chaplain/Pastor in the petitioning church, as well as whether the beneficiary's job is a religious occupation are moot.

Although not discussed by the director in his decision, we note the record lacks sufficient evidence to demonstrate a connection between the petitioner and the Church of God in Ecuador. 8 C.F.R. § 204.5(m)(2) defines a "religious denomination" as a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination.

The religious work performed during the two-year period should be for, or under the auspices of the same religious denomination as the organization that is currently seeking his or her services. Work performed for a different religious denomination during that time period would not be qualifying. The petitioner has not established that there is an institutional relationship or common governing body between the organization currently seeking the beneficiary's services and the institution where the beneficiary claimed to have obtained prior work experience.

The regulatory definition of "religious denomination" is somewhat flexible. "Some form of ecclesiastical government" is one way to establish membership in a denomination, but this is neither exclusive nor mandatory. Still, the petitioner must establish a sufficient commonality between the different churches to justify a finding that they share a denomination.

The burden is on the petitioner to show that the different congregations belong to one denomination; we are under no obligation to assume a common denomination or prove that the congregations belong to different

denominations. In this instance, the petitioner has provided no evidence to establish that there is any connection between the petitioner and the Church of God, located in Ecuador.

The next issue raised in the director's decision is whether the petitioner has the ability to pay the beneficiary the proffered wage. In his decision, the director noted that the petitioner's "internally generated financial statement" does not satisfy the statutory and regulatory requirements.

On appeal, the petitioner submits copies of bank statements for the year 2002 and resubmits a copy of its 2001 financial report, notarized by Dr. [REDACTED] Bishop of the petitioning church. The bank statements demonstrate that for the period covering January 1, 2002 through December 31, 2002, the petitioner's highest closing balance was \$11,183.76¹, while its lowest closing balance was \$1,867.42.² The petitioner's opening balance for February 2002 was \$2,175.77. We do not find these documents to be adequate evidence of the petitioner's ability to pay.

The regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of the ability to pay "shall be" in the form of tax returns, *audited* financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but on *in addition to*, rather than *in place of*, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence. Mr. Rivas' signature as notary public is not equivalent to an independent auditor's attestation of the petitioner's finances. The non-existence or other unavailability of required evidence creates of presumption of ineligibility. *See* 8 C.F.R. § 103.(b)(2)(i).

The remaining issue is whether the petitioner submitted the appropriate evidence of its tax-exempt status. In his decision, the director noted that the tax exemption form submitted by the petitioner shows a different address than the one listed on the petition and concluded that the petitioner failed to establish it was, indeed, tax exempt.

On appeal, the petitioner argues that the address listed on the petition shows the "address of [the petitioner's] agent." A review of the record confirms the petitioner's statement. The petition shows that [REDACTED] signed Part 10 of the form indicating that he prepared the petition on behalf of the petitioner. Mr. [REDACTED] is the director of Rogers Immigra Prepare, whose address is located at [REDACTED]. The remaining evidence in the record, including the petitioner's bank statements and Certificate of Incorporation show the petitioner's address as [REDACTED]. This information is consistent with the information listed on appeal. Based upon this review of the record, we find the tax-exempt form submitted by the petitioner listing the petitioner's address in Haledon, New Jersey to be sufficient evidence of the petitioner's tax-exempt status. We, therefore, withdraw the director's finding in this regard.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

¹ Statement dated 3/30/2002 through 4/30/2002

² Statement dated 6/29/2002 through 7/31/2002

ORDER: The appeal is dismissed.